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Statutory Provisions Involved:

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EXHIBIT 1

[Seal Omitted]

HENRY MCMASTER
ATTORNEY GENERAL

October 31, 2006

Phil Fragapane
Division of Water Resources,
North Carolina Department of Environment
and Natural Resources
1611 Mail Service Center
Raleigh, NC 27699-1611

Re: Concord/Kannapolis Interbasin Transfer

Dear Mr. Fragapane:

On behalf of the citizens of South Carolina, we oppose the request from the communities of Concord and Kannapolis, NC, for the interbasin transfer ("IBT") of large amounts of water from the Catawba and Yadkin/Pee Dee Basins for use in the Rocky River Subbasin. This proposed transfer would adversely affect the water quantity and quality in both the SC portions of the Catawba River and the Pee Dee River. Ultimately, the IBT would impair the affected SC communities' ability to sustain future population growth, to attract new industry and maintain current businesses, to provide adequate drinking water, protect the local wildlife, and accommodate recreation.

Access to clean water is directly linked to the vitality of these South Carolina communities. There should be bi-state participation and cooperation regarding such fundamentally important decisions which affect both North and South Carolina water rights. Both states, together, should develop a basin wide water management plan in order to facilitate responsible and mutually beneficial water resource allocation. For NC's Environmental

Management Commission ("EMC") to unilaterally grant the proposed Concord/Kannapolis IBT without addressing the needs and rights of SC would be detrimental to future cooperation between the two states with respect to water resource management.

> "(f) In determining whether a certificate may be issued for the transfer, the Commission shall specifically consider each of the following items and state in writing its findings of fact with regard to each item:
>
> . . .
>
> (2) The present and reasonably foreseeable future detrimental effects on the source river basin, including present and future effects on public, industrial, and agricultural water supply needs, wastewater assimilation, water quality, fish and wildlife habitat, hydroelectric power generation, navigation, and recreation. Local water supply plans that affect the source major river basin shall be used to evaluate the projected future municipal water needs in the source major river basin."
>
> (2a) The cumulative effect on the source major river basin of any water transfer or consumptive water use that, at the time the Commission considers the application for a certificate is occurring, is authorized under this section, or is projected in any local water supply plan that has been submitted to the Department in accordance with G.S. 143-355(*l*).
>
> (3) The detrimental effects on the receiving river basin, including effects on water quality, wastewater assimilation, fish and wildlife habitat, navigation, recreation, and flooding . . ."

Importantly, the EIS does not even mention the effects (detrimental or otherwise) on the downstream communities, users or municipalities in South Carolina. The FEIS submitted to the EMC is required to consider, according to N.C.G.S.A. §143-215.22I(f)(2) "present and reasonably foreseeable future detrimental effects on the source river basin . . ." However, it fails to do so, completely omitting any mention of effects on the Catawba River Basin in SC. It also fails to say anything with respect to effects on riverways, instead focusing solely on effects to lakes. Further, the effects to lakes is based on the model used by Duke Power in their current FERC relicensing proposal which has not been finalized. Therefore, the parameters relied upon for the purposes of the FEIS may have changed by the time the Duke FERC relicense is approved.

In Section (f)(2a) of the statute, the EMC is required to consider the cumulative effect that this IBT would have on the river system. In order to address this, the FEIS would need to look at future IBTs within the Catawba and Yadkin/Pee Dee basins and to examine projected population growth along these systems both down and upstream, including population and industry growth in South Carolina.

Section (g) of the statute states:

> "(g) A certificate shall be granted for a water transfer if the applicant establishes and the Commission concludes by a preponderance of the evidence based upon the findings of fact made under subsection (f) of this section that: (i) the benefits of the proposed transfer outweigh the detriments of the proposed transfer, and (ii) the detriments have been or will be mitigated to a reasonable degree. The conditions necessary to ensure that the detriments are and continue to be mitigated to a reasonable degree shall be attached to the certificate in accordance with subsection (h) of this section."

This section thus requires that benefits of the proposed IBT outweigh the detriments of the proposed IBT and that the detriments of the IBT be mitigated. The EIS does not accurately establish that the benefits of the proposed IBT outweigh the detriments because it does not address adverse impacts to South Carolina Riparian owners, to community growth, to drinking water supply, or to local environments in South Carolina. Instead, the FEIS focuses upon effect on lake levels based on the previously mentioned, as yet approved, Duke FERC relicense modeling parameters. This analysis simply does not comply with the statute.

Further, the FEIS does not explore in the slightest mitigation in the Catawba Basin at all but only discusses mitigation efforts to be taken in the Rocky River Subbasin., i.e. the receiving basin.

Section (m) of the statute states:

> "(m) It is the public policy of the State to maintain, protect, and enhance water quality within North Carolina. Further, it is the public policy of the State that the cumulative impact of transfers from a source river basin shall not result in a violation of the antidegradation policy set out in 40 Code of Federal Regulations § 131.12 (1 July 1997 Edition) and the statewide antidegradation policy adopted pursuant thereto."

The portion of the Federal Clean Water Act mentioned in section (m) of the statute deals with degradation of waters, which the proposed IBT would violate. (40 CFR §131.12) This section states (in part):

> "(a) The State shall develop and adopt a statewide antidegradation policy and identify the methods for implementing such policy pursuant to this subpart. The antidegradation policy and implementation methods shall, at a minimum, be consistent with the following:

> (1) Existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.
>
> (2) Where the quality of the waters exceed levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, that quality shall be maintained and protected unless the State finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the State's continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation or lower water quality, the State shall assure water quality adequate to protect existing uses fully. Further, the State shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control.
>
> (3) Where high quality waters constitute an outstanding National resource, such as waters of National and State parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected."

The proposed IBT would significantly degrade the waters of SC in terms of water quantity, as well as water quantity, in violation of the Clean Water Act's antidegredation requirements. The FEIS does not discuss mitigation for such degradation to South Carolina waters as federal law requires.

B. Water rights in North and South Carolina are based in the common law principle of Riparian Rights. This

doctrine is rooted in the concept of reasonable use of water by landowners adjacent to the waterway. SC contends that the proposed IBT would interfere with the reasonable use of the water of its riparian owners within the Catawba basin while at the same time conferring a benefit on nonriparian owners in the Ricky River Subbasin.

C. Further, for the North Carolina Environmental Management Commission unilaterally to reach a decision which will ultimately affect commerce within South Carolina is in violation of the United States Constitution, article I, section 3 which delegates regulation of interstate commerce to the U.S. Congress. Clearly, the proposed IBT would effect SC's ability to maintain current infrastructure, attract new business, support growth in population and our economy, and encourage tourism.

Conclusion

The proposed IBT would surely have a detrimental effect upon the economy of SC, our ability to grow and attract new industry, upon the health and vitality of our wildlife, upon recreation and tourism and upon the health and public safety of the citizens of South Carolina. In our view, the proposed IBT contravenes federal statutes as well as the Federal Constitution. We urge rejection of the proposed IBT.

Very Truly Yours,

/s/ L. CHILDS CANTEY

L. Childs Cantey
Assistant Attorney General

On behalf of
Henry McMaster
Attorney General

EXHIBIT 2

[Seal Omitted]

HENRY MCMASTER
ATTORNEY GENERAL

December 19, 2006

The Honorable Roy Cooper
Attorney General, State of North Carolina
North Carolina Department of Justice
9001 Mail Service Center
Raleigh, NC 27699-9001

Re: Proposed Concord/Kannapolis Interbasin Water Transfer

Dear General Cooper:

As you know, on January 10, 2007 the North Carolina Environmental Management Commission is scheduled to render its decision concerning an interbasin water transfer proposed by the towns of Concord and Kannapolis. The State of South Carolina submitted comments to the Commission expressing in detail our concerns regarding the adverse impact this transfer would have upon South Carolina. Governor Sanford has expressed in writing his opposition to this interbasin transfer. Our members of Congress from the Catawba and PeeDee regions have likewise expressed their opposition. South Carolina does not believe the current process by which such a transfer is granted exclusively by North Carolina authorities treats South Carolina's interests and water users in accordance with governing legal principles.

This office has recently been approached by public officials and citizens throughout the Catawba and Wateree River area urging us to take whatever legal action is necessary to protect South Carolina's interests and rights. We are preparing to do so. One such option is litigation in the original jurisdiction of the United States Supreme

Court, a process which can take many years, as witnessed by the boundary dispute between Georgia and South Carolina which consumed more than ten years.

There is an alternative to litigation. The North Carolina Environmental Management Commission could suspend its ongoing IBT proceedings concerning the Concord-Kannapolis transfer while officials of North and South Carolina seek to negotiate an interstate compact addressing this issue, along with other water issues. Such a compact would have to be approved by the two states' legislatures and probably by the United States Congress as well. Our reaching an agreement concerning water disputes and related issues would be wiser and less costly to the taxpayers than litigating each question as it arises. As the Southeast grows, unprecedented water questions will likely arise with increasing frequency. A delay in planning could have serious consequences.

Even if the EMC were to turn down the request from Concord and Kannapolis, we will still need to address these issues as outlined above. If the EMC grants the request in virtually any form, South Carolina will have no choice but to take appropriate legal action to block its implementation.

I look forward to hearing from you and to continued discussions and cooperation.

Yours very truly,

/s/ HENRY MCMASTER

Henry McMaster

EXHIBIT 3

[Seal Omitted]

State of North Carolina

Department of Justice

Roy Cooper, Attorney General

January 3, 2007

The Hon. Henry McMaster, Attorney General
State of South Carolina
P.O. Box 11549
Columbia, S. C. 29211-1549

VIA: Fax and 1st Class Mail

Dear Henry:

Thank you for your letter of December 19, 2006 regarding water resource issues in the Catawba-Wateree River Basin.

The Catawba Basin is an important resource for both of our states. It's important as a clean water supply, a fish and wildlife habitat, a place for recreation, an economic development tool and a source of hydroelectric power. Your letter recognizes the pressures that continued growth in North and South Carolina may put on these resources. A framework for addressing these pressures will benefit both states.

Your letter, of course, raises issues of a legal nature and I thank you for informing me directly of your position. Your letter also raises complex policy issues and fundamental state policy questions regarding water issues. Therefore, I am forwarding your letter to Governor Mike Easley and Secretary of Environment and Natural Resources Bill Ross for their consideration.

Please keep me informed of your thoughts on these issues and your ideas for how they can be resolved.

With kind regards, I am

Very truly yours,

/s/ ROY

Roy Cooper

EXHIBIT 4

No. ____, Original

In The
Supreme Court of the United States

STATE OF SOUTH CAROLINA,
Plaintiff,

v.

STATE OF NORTH CAROLINA,
Defendant.

Affidavit of Dr. A. W. Badr

Personally appeared before me Dr. A. W. Badr, who being duly sworn, states under oath that:

1. I am Chief of Hydrology with the South Carolina Department of Natural Resources and have held this position since 1998.

2. I have earned the following academic degrees:

   a. Ph.D. in Biological and Agricultural Engineering awarded by North Carolina State University, Raleigh, North Carolina in 1983 with a major in Soil and Water Engineering and minors in Water Resources and Civil Engineering.

   b. M.Sc. in Biological and Agricultural Engineering awarded by North Carolina State University, Raleigh, North Carolina in 1978 with a major in Soil and Water Engineering and a minor in Mathematics.

   c. B.Sc. awarded by Alexandria University in Alexander, Egypt in 1968.

3. I provide professional and technical guidance and expertise in hydrology in all areas of concern to the South Carolina Department of Natural Resources, including issues that arise with regard to the Catawba River.

4. I am personally familiar with the Catawba River, various studies made of the Catawba River basin, and with various data that provide historic information about the Catawba River basin such as stream flow, precipitation, and use of the waters of the Catawba River.

5. Publications of mine include:

a. A. W. Badr, A. Wachob, J. A. Gellici (2004). South Carolina Water Plan, Second Edition. South Carolina Department of Natural Resources. 120 pages.

b. J.A. Gellici, A. W. Badr, M. Kiuchi, and S. L. Harwell (2004). Hydrologic Effects of the June 1998 – August 2002 Drought in South Carolina. South Carolina Department of Natural Resources, Report 34. 49 pages.

c. R.N. Cherry, A.W. Badr, A. Wachob (2001). General Hydrology of South Carolina. South Carolina Department of Natural Resources, Land, Water and Conservation Division. Hydrology/Geology Map 2.

d. Tabrizi, M. H., S. E. Said, A. W. Badr (1998). Nonlinear Modeling and Prediction of a River Flow System. Vol. 34 No. 6 Journal of American Water Resources Association, December 1998.

6. Attached hereto and incorporated herein is a report I have prepared at the request of the Attorney General for the State of South Carolina titled *Summary of Catawba-Wateree River Basin natural flows and the impact of water transfers from that basin in North Carolina* dated May 31, 2007, that accurately sets forth my opinion of the hydrologic conditions in the Catawba River basin.

/s/ A. W. BADR
Dr. A. W. Badr, Chief of Hydrology

Sworn to and Subscribed before me
this 31st day of May, 2007

/s/ SANDRA HEATH RUCKER [notary seal omitted]
Notary Public for South Carolina
My commission expires 4-29-09.

South Carolina Department of
Natural Resources

[Seal Omitted]

John E. Frampton
Director

May 31, 2007

Summary of Catawba-Wateree River basin natural flows and the impact of water transfers from that basin in North Carolina

There is usually more than enough water in the Catawba River to meet the needs of all of its water users in South Carolina, but even with responsible and cooperative reservoir management, there will be times when the Catawba River does not have enough water in it to meet South Carolina's needs. During most years, this condition may occur for only a few days if at all, but during drought years, this condition may occur for months at a time. Interbasin transfers of water out of the Catawba basin in North Carolina will reduce the amount of water in the river. Most of the time, there will be ample water in the system so that water transfers out of the basin will not be harmful to South Carolina, but there will be times when there is not enough water in the Catawba River to meet South Carolina's needs, and during those times, water transfers out of the basin in North Carolina will have a detrimental effect on the Catawba River in South Carolina.

Duke Energy owns and operates a system of eleven reservoirs in the Catawba-Wateree basin of North and South Carolina. Six lakes are located entirely in North Carolina, four lakes are located within South Carolina, and Lake Wylie is situated on the North Carolina-South Carolina border. Because the six lakes located entirely in North Carolina all drain into Lake Wylie, the outflow or discharge from Lake Wylie can serve as an indicator of how much water is flowing into South Carolina via the Catawba River.

As part of its recent FERC relicensing process, Duke Energy developed a water mass balance model to simulate conditions in its 11 lakes and the rivers that connect them within the Catawba-Wateree basin. Part of this model included developing natural water inflows for the basin for 75 years from 1929 through 2003, to simulate hydrologic conditions as if the lakes were not there. Results of the Duke Energy model were used to develop water allocation strategies for all users in the basin and to reach a formal agreement in the FERC license guaranteeing specific minimum continuous discharges from Lake Wylie into the Catawba River in South Carolina.

The minimum continuous flow requirement agreed to in the FERC license calls for the release of 1,100 cfs (cubic feet per second) from Lake Wylie into the Catawba River. The minimum continuous flow will be provided by a combination of leakage, spillage, and generation from the Lake Wylie dam.

Using data from the Duke Energy hydrologic model, the natural average daily flow of the Catawba River at the location of the Lake Wylie Dam was compared to the minimum continuous flow requirement (1,100 cfs) from Lake Wylie for the period 1930-2002. Table 1 shows the number of days per year in which the natural river flow at the Lake Wylie Dam would have been less than 1,100 cfs. For example, during the year 2002 — after years of drought — the natural inflow into Lake Wylie would have been less than 1,100 cfs for 104 days. When enough water is stored in the lakes, natural inflow can be supplemented to meet required flows. However, during periods of water shortage and consecutive dry years, low lake levels may make supplemental water unavailable. It is clear that during severe or prolonged droughts (such as in the mid-1950's, the late 1980's, and 1998-2002) there would be many days in which there will not be enough water in the basin to meet the required 1,100 cfs release from Lake Wylie.

The U.S. Geological Survey has operated a streamflow gaging station on the Catawba River just below Lake Wylie since 1942. This gage provides measured daily flows of the Catawba River, and because it is located 3.5 miles downstream of the Lake Wylie Dam, it provides a good measure of the releases from Lake Wylie, which has been in existence since 1904. Data from this gage indicate that daily average releases from Lake Wylie were less than 1,100 cfs for many days of each year (Table 2), and during drought years, that number usually exceeds 100 days.

The impact of a severe drought on the Catawba River can be seen in Figure 1, which shows the measured daily flow of the river just below Lake Wylie in the year 2001. Releases from Lake Wylie were less than 1,100 cfs on 205 days of that year, even though Table 1 indicates that the "natural" flow of the river at this location would have been less than 1,100 cfs for 70 days during that year. The actual flow of the river was much less than what it naturally would have been because some water was removed from the river for offstream uses, such as public supplies, and some water was lost to evaporation, but mainly because lake operators did not release as much water from their lakes as flowed into them. With lake levels already low and no idea of how much longer the drought would last, lake managers tried to retain as much water as possible for as long as possible, at the expense of downstream releases.

The Catawba River can experience very low flows at any time of the year, not just during the dry summer and fall months. Table 3, which lists the lowest measured daily average flow for each day of the year for the gage's 64-year period of record, shows that daily average flows of less than 1,100 cfs occurred on all but two days of the year. For example, the lowest flow of the Catawba River at this gage on any January 6 during the period of record was 562 cfs, and the lowest flow on any January 7 during the period of record was 132 cfs (which occurred on

January 7, 2002, and is also the lowest outflow ever recorded from Lake Wylie).

This information indicates that natural hydrologic conditions can cause insufficient flows in the Catawba River at any time of the year, and during severe droughts, the minimum flow requirement of 1,100 cfs may not be met for months at a time. Hydrologic conditions can result in periods when the basin does not have enough water to maintain the Catawba River at even minimally adequate flows, and during these times, transfers of even relatively small volumes of water out of the basin in North Carolina will further reduce the Catawba River flow, increasing the hardship for water users in South Carolina and prolonging the time that the river's flow will be less than 1,100 cfs.

According to the *South Carolina Water Plan – 2nd Edition*, trigger mechanisms should be established within a basin to reduce or restrict water transfers out of that basin when water availability becomes reduced to the point that there is not enough water to meet required streamflows or the water-use needs of all users within the donor basin. Applying this concept to the Catawba-Wateree basin, all water transfers out of the basin should be reduced as discharges from Lake Wylie approach 1,100 cfs, and all transfers should cease completely if discharges from Lake Wylie fall to 1,100 cfs or less.

The State *Water Plan* also promotes the concept of managing water allocation within an entire basin using a comprehensive plan that involves the entire basin, regardless of political boundaries. A commission or compact should be created to manage and allocate all the water in the Catawba-Wateree basin.

Table 1. Number of days per year during which the natural average daily flow of the Catawba River at the location of the Lake Wylie Dam would have been less than 1,100 cfs, based on data from the Duke Energy CHEOPS hydrologic model

Year	Number of days during which flow is less than 1,100 cfs	Year	Number of days during which flow is less than 1,100 cfs	Year	Number of days during which flow is less than 1,100 cfs
1930	9	1955	27	1980	4
1931	22	1956	37	1981	32
1932	4	1957	5	1982	13
1933	1	1958	4	1983	4
1934	2	1959	1	1984	3
1935	0	1960	4	1985	10
1936	4	1961	5	1986	43
1937	1	1962	9	1987	18
1938	8	1963	10	1988	44
1939	12	1964	4	1989	6
1940	20	1965	3	1990	0
1941	23	1966	4	1991	10
1942	2	1967	3	1992	0
1943	17	1968	8	1993	10
1944	14	1969	0	1994	1
1945	14	1970	2	1995	0
1946	7	1971	0	1996	1
1947	10	1972	4	1997	13
1948	5	1973	0	1998	11
1949	1	1974	0	1999	47
1950	7	1975	0	2000	62
1951	24	1976	0	2001	70
1952	6	1977	4	2002	104
1953	20	1978	1		
1954	29	1979	0		

Table 2. Number of days per year in which the measured daily average flow of the Catawba River below the Lake Wylie Dam (USGS gage 02146000) was less than 1,100 cfs, for the years 1942 through 2004

Year	Number of days in which flow was less than 1,100 cfs	Year	Number of days in which flow was less than 1,100 cfs	Year	Number of days in which flow was less than 1,100 cfs
1942	27	1963	68	1984	41
1943	31	1964	63	1985	108
1944	3	1965	62	1986	154
1945	21	1966	80	1987	93
1946	29	1967	123	1988	200
1947	15	1968	78	1989	50
1948	23	1969	49	1990	35
1949	4	1970	108	1991	59
1950	13	1971	50	1992	45
1951	61	1972	37	1993	76
1952	30	1973	35	1994	28
1953	78	1974	31	1995	10
1954	135	1975	15	1996	27
1955	115	1976	71	1997	48
1956	117	1977	66	1998	82
1957	53	1978	44	1999	109
1958	56	1979	16	2000	164
1959	47	1980	62	2001	205
1960	38	1981	137	2002	228
1961	35	1982	82	2003	10
1962	90	1983	54	2004	13

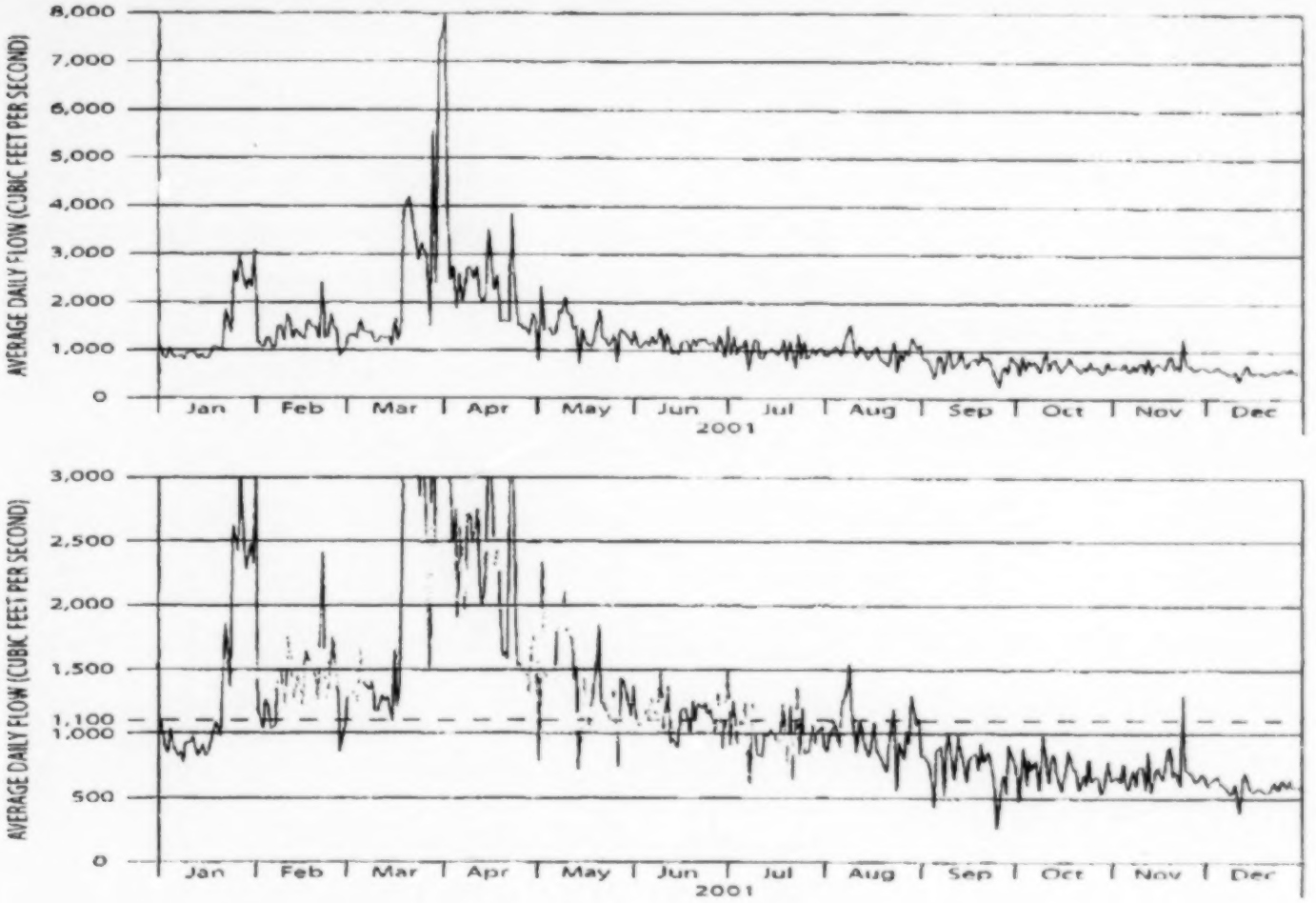

Figure 1. Measured average daily flow of the Catawba River in the year 2001, measured at USGS gage 02146000, located 3.5 miles downstream from the Lake Wylie Dam. The lower graph highlights flows less than 1,100 cubic feet per second.

Table 3. Minimum of daily average flows measured for each day of the year for the Catawba River below the Lake Wylie Dam (USGS gage 02146000), for the years 1942 through 2006

Day of month	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
1	567	606	396	701	638	558	529	648	568	548	552	591
2	554	713	689	672	605	558	572	577	596	475	565	622
3	602	780	633	616	631	566	524	603	567	576	593	649
4	579	756	720	341	572	600	514	565	535	512	602	619
5	597	696	720	286	615	566	576	627	431	598	560	612
6	562	732	641	664	649	576	503	625	562	581	382	600
7	132	609	727	601	602	699	538	660	528	625	409	564
8	646	505	418	592	593	485	612	590	521	560	594	528
9	653	717	620	628	577	626	583	549	581	533	611	545
10	672	661	645	701	610	616	554	587	525	601	615	608
11	546	690	599	676	632	579	535	642	586	572	565	388
12	607	721	688	614	672	606	578	654	525	416	569	627
13	588	742	683	610	624	590	563	561	593	468	541	606
14	616	714	544	618	684	558	589	583	483	266	616	580
15	517	668	478	562	616	620	586	576	625	558	688	537
16	591	758	596	652	663	520	616	535	555	473	565	555
17	549	780	831	618	574	485	518	535	570	368	640	577
18	590	758	1,110	701	684	485	553	642	542	543	622	562
19	587	782	697	579	656	569	730	659	487	513	666	544
20	288	638	732	621	589	533	575	527	528	540	585	537
21	326	590	696	622	660	545	509	564	603	490	592	554
22	594	744	795	664	594	670	616	506	608	538	528	620
23	519	755	623	619	578	539	602	605	496	557	573	564
24	330	714	585	578	574	607	616	309	615	582	676	571
25	587	676	708	350	641	682	608	541	263	545	587	638
26	604	734	645	227	543	578	603	592	595	568	585	550
27	565	652	519	755	573	609	588	636	501	546	591	628
28	647	422	515	667	596	505	616	579	530	527	593	574
29	638	1,110	471	632	588	516	648	588	584	575	593	581
30	759		489	607	582	549	616	468	457	550	654	582
31	657		628		525		605	479		412		555

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EXHIBIT 5

No. ____, Original

In The
Supreme Court of the United States

STATE OF SOUTH CAROLINA,
Plaintiff,

v.

STATE OF NORTH CAROLINA,
Defendant.

Affidavit of Mr. Laron A. Bunch, Jr., Manager of Lake Wylie Marina

---

Personally appeared before me Mr. Laron A. Bunch, Jr., who being duly sworn, states under oath that:

1. I am the manager of the Lake Wylie Marina.

2. Lake Wylie Marina has operated continuously as a family owned business since 1975.

3. I was the Manager of the Lake Wylie Marina during the drought of 2002 (the "Drought") and am familiar with the impacts of the Drought on the operations and finances of the Lake Wylie Marina.

4. The Lake Wylie Marina is located on Highway 49 S. at Buster Boyd Bridge, Lake Wylie, in York County, South Carolina.

5. The Lake Wylie Marina is a seven-acre, full service marina located on the shores of Lake Wylie.

6. In addition to operating as a marine retail operation, Lake Wylie Marina has 82 wet slips, approximately 400 dry storage slips, and a marine repair business.

7. The Lake Wylie marina is located adjacent to the Buster Boyd Access Area, a facility on Lake Wylie containing four public use boat ramps for the purpose of allowing the public to launch boats into Lake Wylie.

8. Many people that use the Buster Boyd Access Area utilize the facilities of Lake Wylie Marina to purchase food, fuel, and other services.

9. The dry storage operation consists of large buildings where boats are stacked in racks. To launch these boats at a customer's request, forklifts are used to lift the boats from the storage racks. The forklifts then carry the boats to lakeside facilities (the "Forklift Facilities") where the forklifts lower the boats into the water.

10. Lake Wylie is a reservoir located in the Catawba River basin and water flows in the Catawba River are critical to the lake levels of Lake Wylie during periods of low precipitation.

11. During the summer of 2002, the water levels of Lake Wylie dropped precipitously as the result of drought conditions. As the result of the drops in lake levels (the following are referred to jointly as the "Impacts"):

a. Duke Energy closed the ramps in the Buster Boyd Access Area for several months because low water levels destroyed the ability of people to launch safely their boats into Lake Wylie. Closing the ramps had a direct financial impact on Lake Wylie Marina by reducing the flow of customers from the Buster Boyd Access Area to the Lake Wylie Marina.

b. Approximately two thirds of the wet slips at Lake Wylie Marina could not be used for approximately three months.

c. Boats stored in the dry storage facilities could not be launched because lake levels were too low for the Forklift Facilities to be used for approximately one month.

d. Lake Wylie Marina lost customers for its wet slips and its dry storage facilities because the wet slips

EXHIBIT 6

No. ____, Original

In The
Supreme Court of the United States

STATE OF SOUTH CAROLINA,
Plaintiff,

v.

STATE OF NORTH CAROLINA,
Defendant.

Affidavit of Senator Robert Wesley Hayes, Jr.

Personally appeared before me Senator Robert Wesley Hayes, Jr., who being duly sworn, states under oath that:

1. I am presently serving in the South Carolina Senate and have been a member of the South Carolina Senate since September 17, 1991.

2. I am a member of the Catawba/Wateree River Basin Bi-State Advisory Commission (the "Commission") established by S.C. Code Ann. Section 44-59-10 and have been a member since the Commission's first meeting on October 21, 2005, serving as the Commission's first Chairman.

3. The Commission consists of fifteen members who reside in counties which abut the Catawba/Wateree River Basin and includes (1) two members of the North Carolina House of Representatives, (2) two members of the North Carolina Senate, (3) two members of the South Carolina House of Representatives, and (4) two members of the South Carolina Senate. Other members of the Commis-

could not be used and the boats stored in the dry storage facilities could not be launched.

12. The Impacts caused material, financial harm to Lake Wylie Marina and adversely impacted the customers of Lake Wylie Marina.

13. Water transfers out of the Catawba River basin that increase the frequency of low water conditions have a material, adverse financial impact on the Lake Wylie Marina.

/s/ LARON A. BUNCH, JR.
Laron A. Bunch, Jr., Manager, Lake Wylie Marina

Sworn to and Subscribed before me
this 30 day of May, 2007

/s/ MELISSA WALLACE [notary seal omitted]
Notary Public for South Carolina
My commission expires 4/26/14.

sion represent various interest groups as set forth in S.C. Code Ann. Section 44-59-50.

4. As set forth in S.C. Code Ann. Section 44-59-20, the purposes of the Commission include (1) providing guidance and making recommendations to local, state, and federal legislative and administrative bodies, and to others as it considers necessary and appropriate, for the use, stewardship, and enhancement of the water, and other natural resources, for all citizens within the river basins [the Catawba Basin in this instance], and (2) providing a forum for discussion of issues affecting the basin's water quantity and water quality, and issues affecting other natural resources.

5. The Commission serves in an advisory capacity only. As set forth in S.C. Code Ann. Section 44-59-20:

> (C) All of the authority granted to the River Basins Advisory Commissions shall be advisory in nature and in no way shall the commissions be construed to have any regulatory authority.
>
> (D) The commissions shall have no authority to obligate or otherwise bind the State of North Carolina, the State of South Carolina, or any agency or subdivision of either state.

6. The Commission passed a resolution and sent a memorandum to the North Carolina Environmental Management Commission dated January 8, 2007, with regard to the Concord/Kannapolis Interbasin Transfer Request that stated in part:

> Whereas, the Commission has received testimony from a variety of residents and governments along the Catawba river Basin in both States [South Carolina and North Carolina] stating concerns regarding the impact of the transfer of water from this Basin [Catawba] to another river basin [Yadkin/Pee Dee] upon their quality of life; and

Whereas, prior public hearings have failed to eliminate opposition to this proposal, and minimize the anxieties and concerns; and,

Whereas, multiple government entities along the Catawba River Basins, including the South Carolina Attorney General, stated at this last meeting their commitment to litigate with the first action being to seek injunctions to stop any withdrawal until the matter is settled judicially.

Whereas, all parties present felt the duly legislated Catawba/Wateree River Basin Bi-State Advisory Commission represented a knowledgeable body that could mediate a result to this dispute without litigation; and,

Whereas, all parties present with a desire to sue agreed to withdraw their commitment to sue if the EMC would delay action for six months and allow the Catawba/Wateree River Basin Bi-State Advisory Commission the opportunity to attempt to assess this situation and mediate a solution;

Be it therefore resolved, that this body recommends that the North Carolina Environmental Advisory Commission delay further action on this matter at least six months. Be it further resolved that the EMC agrees to participate in dialogues and negotiations with the Catawba/Wateree River Basin Bi-State Commission and corresponding state agencies with the common purpose of solving this conflict, and seeking formal procedures and compacts whereby Interstate resolutions to future issues of similar nature be addressed with all participants contributing to the decision-making process.

7. The Memorandum was submitted by North Carolina Senator, the Honorable Dan Clodfelter, Chairman.

8. A true copy of the memorandum is attached hereto.

9. In spite of the best efforts by the parties from both the States of North Carolina and South Carolina working through the Commission, the EMC issued the interbasin transfer certificate to the cities of Concord and Kannapolis.

/s/ ROBERT HAYES, JR.

Senator Robert Wesley Hayes, Jr.

Sworn to and Subscribed before me
this 30 day of May, 2007
/s/ ANN M. JOHN [notary seal omitted]
Notary Public for South Carolina
My commission expires March 5, 2008.

CATAWBA/WATEREE RIVER BASIN BI-STATE ADVISORY COMMISSION

MEMORANDUM

TO: North Carolina Environmental Management Commission

FROM: Sen. Dan Clodfelter, Chairman
Catawba/Wateree River Basin Bi-State Advisory Commission

DATE: January 8, 2007

SUBJECT: Resolution to delay Concord/Kannapolis Interbasin Transfer Request

Be informed that on January 5, 2007, at its duly constituted meeting, the Catawba/Wateree River Basin Bi-State Advisory Commission unanimously approved the following resolution.

Whereas, the Commission has received testimony from a variety of residents and governments along the Catawba River Basin in both States stating concerns regarding the impact of the transfer of water from this Basin to another River Basin upon their quality of life; and

Whereas, prior public hearings have failed to eliminate opposition to this proposal, and minimize anxieties and concerns; and,

Whereas, multiple government entities along the Catawba River Basins, including the South Carolina Attorney General, stated at this last meeting their commitment to litigate with the first action being to seek injunctions to stop any withdrawal until the matter is settled judicially.

Whereas, all parties present felt the duly legislated Catawba/Wateree River Basin Bi-State Advisory Commission represented a knowledgeable body that could mediate a resolution to this dispute without litigation; and,

Whereas, all parties present with a desire to sue agreed to withdraw their commitment to sue if the EMC would delay action for six months and allow the Catawba/Wateree River Basin Bi-State Advisory Commission the opportunity to attempt to assess this situation and mediate a solution;

Be it therefore resolved, that this body recommends that the North Carolina Environmental Advisory Commission delay further action on this matter at least six months. Be it further resolved that the EMC agrees to participate in dialogues and negotiations with the Catawba/Wateree River Basin Bi-State Commission and corresponding state agencies with the common purpose of solving this conflict, and seeking formal procedures and compacts whereby Interstate resolutions to future issues of similar nature be addressed with all participants contributing to the decision-making process.

Respectfully submitted,

Dan Clodfelter, Chairman

ATTACHMENTS

EXHIBIT 7

No. ____, Original

In The
Supreme Court of the United States

STATE OF SOUTH CAROLINA,
Plaintiff,

v.

STATE OF NORTH CAROLINA,
Defendant.

Affidavit of Mr. Dale Herendeen

Personally appeared before me Mr. Dale Herendeen, who being duly sworn, states under oath that:

1. I am employed by Bowater Incorporated ("Bowater").

2. I am the Environmental Manager of Bowater's Catawba Operation (the "Catawba Plant"), located on the Catawba River, Town of Catawba, York County, South Carolina.

3. I have worked at the Catawba Plant as Environmental Manager since May 2001.

4. I am familiar with the impacts of the drought of 2002 on the Catawba Plant.

5. The Catawba Plant:

   a. Was established in 1957.

   b. Is one of the largest coated paper and market pulp mills in the world and is the largest in North America.

c. Has an annual capacity of 649,000 metric tons of coated paper and 245,000 metric tons of market pulp.

6. The South Carolina Chamber of Commerce named Bowater's Catawba Operations South Carolina's 2004 Manufacturer of the Year. In 2005, Industry Week Magazine in association with the National Association of Manufacturers (NAM) named Bowater's Catawba Operations a "Best Plants" award winner.

7. The Catawba Operation employs approximately 1,000 employees.

8. From 2003 through 2005, the Catawba Operation has received capital improvements that included the construction of a $175 million state-of-the-art kraft-pulping mill, along with a $106 million paper machine conversion.

9. The Catawba Plant is dependent on water as a resource that is temporarily removed from the Catawba River and used in plant operations that is then returned to the Catawba River in treated form.

10. When operating at full capacity, the Catawba Plant uses approximately 30 million gallons per day of water from the Catawba River that is returned to the Catawba River after appropriate treatment.

11. For the Catawba Plant to operate efficiently, the Catawba River (a) must be high enough to cover the plant intakes located on the Catawba River and (b) flowing at a rate adequate to receive the water discharges from the Catawba Plant within the limits of the Catawba River's assimilative capacity at the discharge point.

12. During one of the worst droughts on record, from 1998 to 2002, the Catawba River was severely depleted and the lack of water threatened the operations of the Catawba Plant.

13. The reduced flows in the Catawba River from 1998 – 2002 reduced the assimilative capacity of the Catawba River at the Catawba Plant such that the Catawba Plant was forced to severely limit its discharge into the

Catawba River because there was not enough flow to assimilate treated wastewater at the limits prescribed by its state permit. As a result, the Catawba Plant had to utilize on-site holding ponds for wastewater and incur extra wastewater treatment costs in excess of $6000/day to maintain production. By late 2002, the Catawba Plant was close to reaching holding pond capacity. If holding pond capacity had been reached, the Catawba Plant would have had to potentially curtail production which would have likely caused significant financial loss to Bowater and forced layoffs due to the cessation of plant operations.

14. Transfers of water out of the Catawba River basin in the State of North Carolina mean less water is available in the Catawba River to meet the requirements of the Catawba Plant operations.

/s/ DALE HERENDEEN
Dale Herendeen, Environmental Manager

Sworn to and Subscribed before me
this 30 day of May, 2007

/s/ Donna Uebler [notary seal omitted]
Notary Public for South Carolina
My commission expires February 3, 2010.

EXHIBIT 8

No. ____, Original

In The
Supreme Court of the United States

STATE OF SOUTH CAROLINA,
Plaintiff,

v.

STATE OF NORTH CAROLINA,
Defendant.

Affidavit of Ms. Donna Lisenby, Catawba Riverkeeper

Personally appeared before me Ms. Donna Lisenby, who being duly sworn, states under oath that:

1. I am the Catawba Riverkeeper and the Executive Director of the Catawba Riverkeeper Foundation, Inc. (the "Foundation").

2. The Foundation is a 501(c)(3) non-profit environmental organization.

3. I have been the Catawba Riverkeeper since 1998.

4. I received a Bachelors of Science from Clemson University in 1987.

5. The mission of the Foundation is to advocate for and secure protection and enhancement of the Catawba River, its lakes, tributaries and watershed so that it will always sustain the human and wildlife populations that depend on it for life.

6. I am personally familiar with the Catawba River from its origins in the State of North Carolina until its terminus in the State of South Carolina.

7. The statements and opinions set forth in this affidavit are based on my experiences working as the Catawba Riverkeeper, including participation in rulemaking and legislative processes, patrolling the river, studying and commenting on permits and developments proposed within the basin, reading studies, documents and other materials, and involvement in a variety of other matters that have an effect on the Catawba River and its environs, and the aquatic life it supports.

8. Part of my job as the Catawba Riverkeeper is to patrol the entire reach of the Catawba River, including the various reservoirs created by dams in the Catawba River, in the States of North Carolina and South Carolina, both by boat and by vehicle.

9. The Catawba River basin, in the States of North Carolina and South Carolina:

a. Contains 13 hydro stations

b. Contains 11 reservoirs

c. Spans over 362 km of river

d. Has a total drainage area of approximately 2888 km of reservoir and island shoreline

e. Flows through nine counties in North Carolina and five counties in South Carolina

f. Has a total drainage area of 12,302.5 square kms

g. Provides a drinking water supply for over 1.3 million people whose needs are projected to increase over 200% in the next 50 years

h. Provides the energy to power 116,000 homes and the water to support over 8100MW of fossil and nuclear-fueled power plants

10. There is an intricate set of dependencies on the Catawba/Wateree River system, all hinging upon the delicate balance of water use both now and in the future. Jobs, communities, industry, recreation, and the environment are at stake.

11. The water flows of the Catawba River vary widely from season to season and year to year. For example, the United States Geological Survey has reported the following data for the Catawba River at their stream gauge located on the Catawba River Near Rock Hill, SC:

The numbers are the average minimum, maximum, and mean stream flow in cubic feet per second for the date given calculated for the period Oct. 1, 1895, through Sept. 30, 2006, as reported by the United States Geological Survey.

	Minimum	Maximum	Mean[1]
March 31	628	19,100	6,550
June 30	549	9,540	3,240
September 30	457	14,200	3,240
December 31	555	93,000	5,820

12. As Catawba Riverkeeper, I meet with stakeholders, interested parties, and representatives of state agencies about issues of concern about the Catawba River.

13. As Catawba Riverkeeper, I have participated on behalf of the Foundation as a stakeholder in the ongoing negotiations (the "FERC Negotiations") between Duke Power Company LLC, doing business as Duke Energy Carolinas, LLC ("Duke") and other stakeholders related to the renewal of various Federal Energy Regulatory Commission ("FERC") licenses for various reservoirs located on the Catawba River that are held by Duke.

14. The FERC Negotiations resulted in certain agreements with regard to the FERC Licenses that are set forth in that certain Comprehensive Relicensing Agreement for the Catawba-Wateree Hydro Project FERC Project No. 2232 effective as of August 1, 2006 (the "Relicensing Agreement").

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[1] http://waterdata.usgs.gov/nwis

15. I am familiar with the terms of the Relicensing Agreement.

16. The Relicensing Agreement has been filed with the FERC.

17. As Catawba Riverkeeper and through participation in the FERC Negotiations, I am familiar with the protocols related to river flows, particularly the low in flow protocols (the "LI Protocols") and how the LI Protocols are implemented and the effect that removing water from the Catawba River has on the frequency of implementation of the LI Protocols, particularly in times of drought.

18. The Catawba River begins in the mountains of North Carolina near Mount Mitchell and on its 225 mile course to South Carolina is dammed 11 times creating the following reservoirs: Lake James, Lake Rhodhiss, Lake Hickory, Lake Lookout Shoals, Lake Norman, Mountain Island Lake, Lake Wylie, Fishing Creek Lake, Great Falls Lake, Rocky Creek Lake and Lake Wateree.

19. As Catawba Riverkeeper, I am familiar with various issues impacting the Catawba River, including, but not limited to (a) water quality, (b) water quantity, (c) historic streamflow patterns and their impacts on the users of the Catawba River, (d) historic reservoir levels and their impact on the users of the Catawba River and its associated lakes, (e) development both within and along the shores of the Catawba River, (f) industrial development along the Catawba River, (g) current populations and predicted growth along the Catawba River corridor, (h) the flora and fauna found in and appurtenant to the Catawba River, (i) current and predicted demand for the waters of the Catawba River, (j) the issues with regard to the impacts and potential impacts of interbasin transfers of the waters of the Catawba River to other river basins, and (k) the impact of the LI Protocols, particularly in time of drought.

20. The Catawba River basin has one of the fastest growing populations in the States of North and South Carolina. The largest city in North and South Carolina is

Charlotte, NC. It is located in the Catawba River Basin. The greater Charlotte region added approximately 300,000 residents from 2000 to 2006 or the equivalent of twice the population of Asheville, North Carolina.

21. The consequences of interbasin transfers of water out of the Catawba River basin by the upstream State of North Carolina reach through the agency of natural laws into the territory of the State of South Carolina because the flow of the Catawba River is reduced. The natural consequences of such interbasin transfers impact the State of South Carolina by lowering the quantity of water in the Catawba River that flows into the State of South Carolina.

22. During one of the worst droughts on record, from 1998 to 2002, the Catawba River was severely depleted and struggled to meet water demands at the 2002 population levels. During the last year of the drought, the following impacts were recorded (the "Drought Factors"):

a. Algae blooms occurred on Lake Wateree in the State of South Carolina that caused such taste and odor problems in finished drinking water for the City of Camden, South Carolina that residents stopped drinking tap water and started buying bottled water.

b. Most boat landings and public access areas on the Catawba River lakes, in both the States of North Carolina and South Carolina, closed due to low water levels, greatly impacting public recreation and access to these public trust waters.

c. Duke dramatically reduced electricity generation at their thirteen hydroelectric power generation stations located on the Catawba River.

d. The Bowater pulp and paper mill in the State of South Carolina was forced to severely limit its discharge into the Catawba River because there was not enough flow to assimilate treated wastewater at the limits prescribed by its state permit. As a result, Bowater had to construct temporary

holding ponds for wastewater, and the plant was within days of reaching holding pond capacity which would have necessitated shut down of one of the State of South Carolina's largest employers.

e. Major tributaries of the Catawba River basin, including Fishing Creek which flows through York and Chester counties in the State of South Carolina, were so reduced in flow that the only waters flowing were waters from wastewater treatment discharges.

23. The diversion of the waters of the Catawba River in the State of North Carolina into other river basins results, through the agency of natural law, in decreasing the flows into the State of South Carolina and exacerbates the Drought Factors whenever there are drought conditions in the Catawba River basin.

24. The Relicensing Agreement contains certain protocols for the reservoir system operated by Duke known as the "Low In Flow Protocols" (the "LI Protocols"). As set forth in Appendix C of the Relicensing Agreement with regard to the LI Protocols:

Low Inflow Protocol (LIP) for the Catawba-Wateree Project

PURPOSE

The purpose of this Low Inflow Protocol (LIP) is to establish procedures for reductions in water use during periods of low inflow to the Catawba-Wateree Project (the Project). The LIP was developed on the basis that all parties with interests in water quantity will share the responsibility to establish priorities and to conserve the limited water supply.

OVERVIEW

This Low Inflow Protocol provides trigger points and procedures for how the Catawba-Wateree Pro-

ject will be operated by the Licensee [Duke], as well as water withdrawal reduction measures and goals for other water users during periods of low inflow (i.e., periods when there is not enough water flowing into the Project reservoirs to meet the normal water demands while maintaining Remaining Usable Storage [defined in the Relicensing Agreement] in the reservoir system at or above a seasonal target level). The Licensee will provide flow from hydro generation and other means to support electric customer needs and the instream flow needs of the Project. During periods of normal inflow, reservoir levels will be maintained within prescribed Normal Operating Ranges [defined in the Relicensing Agreement]. During times that inflow is not adequate to meet all of the normal demands for water and maintain reservoir levels as normally targeted the Licensee will progressively reduce hydro generation. If hydrologic conditions worsen until trigger points outlined herein are reached, the Licensee will declare a Stage 0 - Low Inflow Watch and begin meeting with the applicable agencies and water users to discuss this LIP. If hydrologic conditions continue to worsen, the Licensee will declare various stages of a Low Inflow Condition (LIC) as defined in the Procedure section of this document. Each progressive stage of the LIC will call for greater reductions in hydro station releases and water withdrawals, and allow additional use of the available water storage inventory. The goal of this staged LIP is to take the actions needed in the Catawba-Wateree River Basin to delay the point at which the Project's usable water storage inventory is fully depleted. While there are no human actions that can guarantee that the Catawba-Wateree River Basin will never experience operability limitations at water intake structures due to low reservoir levels or low streamflows, this LIP is intended to provide additional

time to allow precipitation to restore streamflow, reservoir levels, and groundwater levels to normal ranges. The amount of additional time that is gained during the LIP depends primarily on the diagnostic accuracy of the trigger points, the amount of regulatory flexibility the Licensee has to operate the Project, and the effectiveness of the Licensee and other water users in working together to implement their required actions and achieve significant water use reductions in a timely manner.

25. All interbasin transfers authorized by the State of North Carolina, including the recent transfer granted to the North Carolina cities of Concord and Kannapolis that transfer water out of the Catawba River into the Yadkin/Pee Dee River Basin, impact and injure the State of South Carolina by:

a. Affecting both the quality and quantity of water by permanently removing water from the portion of the Catawba River located in the State of North Carolina upstream of the border with the State of South Carolina, making less water available to the State of South Carolina for drinking, recreation, economic development, and waste assimilation.

b. Causing an increase in the amount of treated waste water discharged into the Yadkin/Pee Dee Rivers, thereby removing waste assimilation capacity from the South Carolina portion of the Pee Dee River which impacts South Carolina local governments and industries currently dependent on the Pee Dee River for drinking water, recreation, economic development and waste assimilation.

c. Exacerbating the Drought Factors during any periods of drought conditions in the Catawba River basin.

d. Increasing the frequency that LI Protocols under the FERC Licenses will be implemented to the detriment of all stakeholders, including the State of South Carolina, its citizens, its municipalities, and the flora and fauna of the Catawba River.

e. Increasing the frequency that the Catawba River Project's usable water storage inventory will be depleted.

26. Based on materials I have read and conditions I have observed, and the statements made above, it is my opinion that the Catawba River has reached its threshold for sustainable use.

/s/ DONNA LISENBY
Donna Lisenby, Catawba Riverkeeper

Sworn to and Subscribed before me
this 30th day of May, 2007

/s/ SUSAN ADKINS [notary seal omitted]
Notary Public for South Carolina
My commission expires 2/27/16.

STATUTORY PROVISIONS INVOLVED

North Carolina General Statutes Annotated § 143-215.22G provides:

§ 143-215.22G. Definitions.

In addition to the definitions set forth in G.S. 143-212 and G.S. 143-213, the following definitions apply to this Part.

(1) "River basin" means any of the following river basins designated on the map entitled "Major River Basins and Sub-basins in North Carolina" and filed in the Office of the Secretary of State on 16 April 1991. The term "river basin" includes any portion of the river basin that extends into another state. Any area outside North Carolina that is not included in one of the river basins listed in this subdivision comprises a separate river basin.

a.	1-1	Broad River.
b.	2-1	Haw River.
c.	2-2	Deep River.
d.	2-3	Cape Fear River.
e.	2-4	South River.
f.	2-5	Northeast Cape Fear River.
g.	2-6	New River.
h.	3-1	Catawba River.
i.	3-2	South Fork Catawba River.
j.	4-1	Chowan River.
k.	4-2	Meherrin River.
l.	5-1	Nolichucky River.
m.	5-2	French Broad River.
n.	5-3	Pigeon River.
o.	6-1	Hiwassee River.

p.	7-1	Little Tennessee River.
q.	7-2	Tuskasegee (Tuckasegee) River.
r.	8-1	Savannah River.
s.	9-1	Lumber River.
t.	9-2	Big Shoe Heel Creek.
u.	9-3	Waccamaw River.
v.	9-4	Shallotte River.
w.	10-1	Neuse River.
x.	10-2	Contentnea Creek.
y.	10-3	Trent River.
z.	11-1	New River.
aa.	12-1	Albemarle Sound.
bb.	13-1	Ocoee River.
cc.	14-1	Roanoke River.
dd.	15-1	Tar River.
ee.	15-2	Fishing Creek.
ff.	15-3	Pamlico River and Sound.
gg.	16-1	Watauga River.
hh.	17-1	White Oak River.
ii.	18-1	Yadkin (Yadkin-Pee Dee) River.
jj.	18-2	South Yadkin River.
kk.	18-3	Uwharrie River.
ll.	18-4	Rocky River.

(2) "Surface water" means any of the waters of the State located on the land surface that are not derived by pumping from groundwater.

(3) "Transfer" means the withdrawal, diversion, or pumping of surface water from one river basin and discharge of all or any part of the water in a river basin different from the origin. However, notwithstanding the basin definitions in G.S.

143-215.22G(1), the following are not transfers under this Part:

a. The discharge of water upstream from the point where it is withdrawn.

b. The discharge of water downstream from the point where it is withdrawn. (1991, c. 712, s. 1; 1993, c. 348, s. 1; 1997-443, s. 15.48(b).)

North Carolina General Statutes Annotated § 143-215.22I provides:

§ 143-215.22I. Regulation of surface water transfers.

(a) No person, without first securing a certificate from the Commission, may:

(1) Initiate a transfer of 2,000,000 gallons of water or more per day from one river basin to another.

(2) Increase the amount of an existing transfer of water from one river basin to another by twenty-five percent (25%) or more above the average daily amount transferred during the year ending July 1, 1993, if the total transfer including the increase is 2,000,000 gallons or more per day.

(3) Increase an existing transfer of water from one river basin to another above the amount approved by the Commission in a certificate issued under G.S. 162A-7 prior to July 1, 1993.

(b) Notwithstanding the provisions of subsection (a) of this section, a certificate shall not be required to transfer water from one river basin to another up to the full capacity of a facility to transfer water from one basin to another if the facility was existing or under construction on July 1, 1993.

(c) An applicant for a certificate shall petition the Commission for the certificate. The petition shall be in writing and shall include the following:

(1) A description of the facilities to be used to transfer the water, including the location and capacity of water intakes, pumps, pipelines, and other facilities.

(2) A description of the proposed uses of the water to be transferred.

(3) The water conservation measures to be used by the applicant to assure efficient use of the water and avoidance of waste.

(4) Any other information deemed necessary by the Commission for review of the proposed water transfer.

(d) Upon receipt of the petition, the Commission shall hold a public hearing on the proposed transfer after giving at least 30 days' written notice of the hearing as follows:

(1) By publishing notice in the North Carolina Register.

(2) By publishing notice in a newspaper of general circulation in the area of the river basin downstream from the point of withdrawal.

(3) By giving notice by first-class mail to each of the following:

a. A person who has registered under this Part a water withdrawal or transfer from the same river basin where the water for the proposed transfer would be withdrawn.

b. A person who secured a certificate under this Part for a water transfer from the same river basin where the water for the proposed transfer would be withdrawn.

c. A person holding a National Pollutant Discharge Elimination System (NPDES) wastewater discharge permit exceeding 100,000 gallons per day for a discharge located downstream from the proposed withdrawal point of the proposed transfer.

d. The board of county commissioners of each county that is located entirely or partially within the river basin that is the source of the proposed transfer.

e. The governing body of any public water supply system that withdraws water downstream from the withdrawal point of the proposed transfer.

(e) The notice of the public hearing shall include a nontechnical description of the applicant's request and a conspicuous statement in bold type as to the effects of the water transfer on the source and receiving river basins. The notice shall further indicate the procedure to be followed by anyone wishing to submit comments on the proposed water transfer.

(f) In determining whether a certificate may be issued for the transfer, the Commission shall specifically consider each of the following items and state in writing its findings of fact with regard to each item:

(1) The necessity, reasonableness, and beneficial effects of the amount of surface water proposed to be transferred and its proposed uses.

(2) The present and reasonably foreseeable future detrimental effects on the source river basin, including present and future effects on public, industrial, and agricultural water supply needs, wastewater assimilation, water quality, fish and wildlife habitat, hydroelectric power generation, navigation, and recreation. Local water supply plans that affect the source major river basin shall be used to evaluate the projected future municipal water needs in the source major river basin.

(2a) The cumulative effect on the source major river basin of any water transfer or consumptive water use that, at the time the Commission considers the application for a certificate is occurring, is authorized under this section, or is projected in any local water supply plan that has been submitted to the Department in accordance with G.S. 143-355(*l*).

(3) The detrimental effects on the receiving river basin, including effects on water quality, wastewater assimilation, fish and wildlife habitat, navigation, recreation, and flooding.

(4) Reasonable alternatives to the proposed transfer, including their probable costs, and environmental impacts.

(5) If applicable to the proposed project, the applicant's present and proposed use of impoundment storage capacity to store water during high-flow periods for use during low-flow periods and the applicant's right of withdrawal under G.S. 143-215.44 through G.S. 143-215.50.

(6) If the water to be withdrawn or transferred is stored in a multipurpose reservoir constructed by the United States Army Corps of Engineers, the purposes and water storage allocations established for the reservoir at the time the reservoir was authorized by the Congress of the United States.

(7) Any other facts and circumstances that are reasonably necessary to carry out the purposes of this Part.

(f1) An environmental assessment as defined by G.S. 113A-9(1) shall be prepared for any petition for a certificate under this section. The determination of whether an environmental impact statement shall also be required shall be made in accordance with the provisions of Article 1 of Chapter 113A of the General Statutes. The applicant who petitions the Commission for a certificate under this section shall pay the cost of special studies necessary to comply with Article 1 of Chapter 113A of the General Statutes.

(g) A certificate shall be granted for a water transfer if the applicant establishes and the Commission concludes by a preponderance of the evidence based upon the find-

ings of fact made under subsection (f) of this section that: (i) the benefits of the proposed transfer outweigh the detriments of the proposed transfer, and (ii) the detriments have been or will be mitigated to a reasonable degree. The conditions necessary to ensure that the detriments are and continue to be mitigated to a reasonable degree shall be attached to the certificate in accordance with subsection (h) of this section.

(h) The Commission may grant the certificate in whole or in part, or deny the certificate. The Commission may also grant a certificate with any conditions attached that the Commission believes are necessary to achieve the purposes of this Part. The conditions may include mitigation measures proposed to minimize any detrimental effects of the proposed transfer and measures to protect the availability of water in the source river basin during a drought or other emergency. The certificate shall include a drought management plan that specifies how the transfer shall be managed to protect the source river basin during drought conditions. The certificate shall indicate the maximum amount of water that may be transferred. No person shall transfer an amount of water that exceeds the amount in the certificate.

(i) In cases where an applicant requests approval to increase a transfer that existed on July 1, 1993, the Commission shall have authority to approve or disapprove only the amount of the increase. If the Commission approves the increase, however, the certificate shall be issued for the amount of the existing transfer plus the requested increase. Certificates for transfers approved by the Commission under G.S. 162A-7 shall remain in effect as approved by the Commission and shall have the same effect as a certificate issued under this Part.

(j) In the case of water supply problems caused by drought, a pollution incident, temporary failure of a water plant, or any other temporary condition in which the public health requires a transfer of water, the Secretary of Environment and Natural Resources may grant approval

for a temporary transfer. Prior to approving a temporary transfer, the Secretary shall consult with those parties listed in G.S. 143-215.22I(d)(3) that are likely to be affected by the proposed transfer. However, the Secretary shall not be required to satisfy the public notice requirements of this section or make written findings of fact and conclusions in approving a temporary transfer under this subsection. If the Secretary approves a temporary transfer under this subsection, the Secretary shall specify conditions to protect other water users. A temporary transfer shall not exceed six months in duration, but the approval may be renewed for a period of six months by the Secretary based on demonstrated need as set forth in this subsection.

(k) The substantive restrictions and conditions upon surface water transfers authorized in this section may be imposed pursuant to any federal law that permits the State to certify, restrict, or condition any new or continuing transfers or related activities licensed, relicensed, or otherwise authorized by the federal government.

(*l*) When any transfer for which a certificate was issued under this section equals eighty percent (80%) of the maximum amount authorized in the certificate, the applicant shall submit to the Department a detailed plan that specifies how the applicant intends to address future foreseeable water needs. If the applicant is required to have a local water supply plan, then this plan shall be an amendment to the local water supply plan required by G.S.143-355(*l*). When the transfer equals ninety percent (90%) of the maximum amount authorized in the certificate, the applicant shall begin implementation of the plan submitted to the Department.

(m) It is the public policy of the State to maintain, protect, and enhance water quality within North Carolina. Further, it is the public policy of the State that the cumulative impact of transfers from a source river basin shall not result in a violation of the antidegradation policy set

out in 40 Code of Federal Regulations § 131.12 (1 July 1997 Edition) and the statewide antidegradation policy adopted pursuant thereto. (1993, c. 348, s. 1; 1997-443, ss. 11A.119(a), 15.48(c); 1997-524, s. 1; 1998-168, s. 4; 2001-474, s. 28.)